

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - -X  
UNITED STATES OF AMERICA, : 19-CR-408 (MKB)  
Plaintiff, :  
-against- :  
ISKYO ARNOV, MICHAEL : United States Courthouse  
KONSTANTINOVSKIY, TOMER : Brooklyn, New York  
DAFNA, AVRAHAM TARSHISH, AND :  
MICHAEL HERSKOWITZ, :  
Defendants. :  
: Wednesday, October 2, 2019  
- - - - -X 11:00 a.m.

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE MARGO K. BRODIE  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings

3

P R O C E E D I N G S

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(In open court.)

THE COURTROOM DEPUTY: Criminal cause for status  
conference, Docket Number 19-CR-408 --

THE COURT: Please be seated, everyone.

THE COURTROOM DEPUTY: -- United States versus  
Arnov, et al.

Will, Counsel please state your names for the  
record?

MS. JONES: Shannon Jones for the United States.  
Good morning, Your Honor.

THE COURT: Good morning, Ms. Jones.  
Counsel?

MR. EMOUNA: Good morning, Your Honor. On behalf  
of Tomer Dafna, Matin Emouna.

THE COURT: Good morning, Counsel.

MR. EMOUNA: Good morning, Your Honor.

THE COURT: All right.

MR. GREENBERG: Good morning, Your Honor.

THE COURT: Good morning.

MR. GREENBERG: Your Honor, on behalf of Michael  
Herskowitz, Addabbo & Greenberg by Todd Greenberg. Good

Proceedings

4

1 morning.

2 THE COURT: Good morning.

3 MS. NECHELES: Good morning, Your Honor. Susan  
4 Necheles and Kate Cassidy on behalf of Mr. Tarshish.

5 THE COURT: Good morning.

6 MR. GILBERT: Good morning, Your Honor. Michael  
7 Gilbert on behalf of Mr. Arnov.

8 MR. ABELL: Good morning, Mr. Gilbert.

9 MR. GILBERT: Good morning.

10 MR. ABELL: Good morning, Your Honor. Kenneth  
11 Abell on behalf of Mr. Konstantinovskiy.

12 THE COURT: Good morning. And good morning to all  
13 the defendants.

14 ALL DEFENDANTS: Good morning.

15 THE COURT: What is the current status of this  
16 matter, Ms. Jones?

17 MS. JONES: Your Honor, this is our first status  
18 conference in this case.

19 THE COURT: It is.

20 MS. JONES: Everyone has been arraigned. Four of  
21 the defendants were arraigned on the day they were arrested  
22 in November -- or September 10th. And Mr. Arnov was  
23 arraigned last week on September 25th.

24 I sent everybody a stipulation to cover discovery  
25 and particularly personally identified the information

## Proceedings

5

1 because almost all the discovery in this case will have  
2 personal information of homeowners, bank account  
3 information, all that -- all that material.

4 THE COURT: And is it a protective order that  
5 you --

6 MS. JONES: Yeah. Just -- just to deal with that,  
7 that material.

8 THE COURT: Right.

9 MS. JONES: And once I have all the signed  
10 stipulations back from the parties, I will submit it to  
11 the Court to be so ordered.

12 Recording discovery, as I discussed just right now  
13 with Defense Counsel, everything -- with respect to  
14 everything will be produced in electronic format, and we're  
15 having it all prepared into a -- hopefully one or two -- at  
16 least two separate load files that we'll be able to make  
17 available to the defense counsel. I'm hoping that the first  
18 load file, which will be the bulk of the material that we've  
19 gathered to date, including grand jury material,  
20 administrative *subpoenas*, anything we've gathered from  
21 witnesses voluntarily will be produced in about two weeks.  
22 It's in the process of being dealt with by the  
23 Litigation Tech Support Center that the Department of  
24 Justices uses for that material.

25 THE COURT: Okay.

Proceedings

6

1 MS. JONES: And then there are --

2 THE COURT: And when do you expect that the second  
3 part of it will be disclosed?

4 MS. JONES: The second part is -- of course, as  
5 the investigation is ongoing, so we'll make supplemental  
6 productions as we gather more material.

7 THE COURT: Right.

8 MS. JONES: But the other big set of materials  
9 will be items that were seized on the Defendant Tomer Dafna.  
10 We have items that were seized in May during a border  
11 search. And then we also have items that were seized when  
12 his -- when -- on the day of his arrest, there was a  
13 search warrant and the search was executed at his house. So  
14 those items have to be treated differently because we expect  
15 there will be a --

16 THE COURT: Slow down.

17 MS. JONES: I'm sorry.

18 THE COURT: You speak so quickly.

19 MS. JONES: Those items will have to be treated  
20 differently because I expect there will need to be a  
21 privilege from you. So I discussed that with defense  
22 counsel for Mr. Dafna. But the review will be -- the first  
23 step is to get everything uploaded into a searchable  
24 database that we can then run search terms against based on  
25 the attorney names provided by Mr. Dafna's counsel. So I've

Proceedings

7

1 discussed that with Mr. Dafna's counsel, getting the list of  
2 attorney names and I'm waiting for that.

3 THE COURT: Okay. So turning to Defendants: How  
4 quickly can you get the protective order so that discovery  
5 can be disposed? Do we have any court, and can the parties  
6 sign it, or do you need time to review it?

7 MS. CASSIDY: Your Honor, Kathleen Cassidy on  
8 behalf of Defendant Karshish.

9 We have some issues that we need to speak to the  
10 Government about.

11 THE COURT: With regarded to the order?

12 MS. CASSIDY: The order, yes.

13 THE COURT: Okay.

14 MS. CASSIDY: So we can work with the Government  
15 and get a signed order.

16 THE COURT: Okay.

17 MR. GREENBERG: Same here with Mr. Herskowitz,  
18 Your Honor --

19 THE COURT: You can remain seated, Counsel.

20 MR. GREENBERG: I'm sorry?

21 THE COURT: You can remain seated.

22 MR. GREENBERG: Thank you. Todd Greenberg on  
23 behalf of Mr. Herskowitz.

24 Judge, I have some issues that go to the basis of  
25 this stipulation and order, which I hadn't had a chance to

Proceedings

8

1 speak with the Government about. I just think it's just  
2 overburdensome.

3 THE COURT: Okay.

4 MR. GREENBERG: I'm going to --

5 THE COURT: So I suggest you discuss it with  
6 the Government.

7 MR. GREENBERG: Sure.

8 THE COURT: And to the extent the parties cannot  
9 agree on the language, you should submit a letter to the  
10 Court -- you can do it under seal, if you want -- notifying  
11 me as to what the dispute is so that I can resolve it.

12 And so how much time are the parties asking for  
13 in order to review the materials that you should be  
14 receiving shortly? It sounds like it is going to take a  
15 little while?

16 MS. JONES: It -- it is, Your Honor. We have  
17 discussed -- we have discussed having the next status  
18 conference about six weeks out. But there seems to be a  
19 preference to do it the week after Thanksgiving, rather than  
20 the week before. So that would put us during -- into the  
21 first week of December.

22 THE COURT: Based on my trial schedule here --

23 MS. JONES: Yes.

24 THE COURT: -- that's better for the Court.

25 MS. JONES: Okay.



Proceedings

9

1 MS. NECHELES: Your Honor?

2 THE COURT: Yes.

3 MS. NECHELES: Susan Necheles. Can we just ask  
4 what the volume of the material is? We don't have any sense  
5 as to, you know, how long it would take, depending on the  
6 volume of the material is.

7 THE COURT: I suggest that you discuss that  
8 off-line with Ms. Jones. I'm sure she will be more than  
9 happy to provide that information to you.

10 Based on what she just represented in court, it  
11 sounds like you will get it, the bulk of it, or at least  
12 half of it soon and the other half later on. In terms of  
13 volume, just ask her. I'm sure she will tell you.

14 So can give me a date, Winnie?

15 THE COURTROOM DEPUTY: Yes, Judge. December 3rd.

16 THE COURT: December 3rd, does that work for all  
17 the parties, and that will be at 10:00 a.m.?

18 MR. GILBERT: That's fine, Your Honor.

19 MS. CASSIDY: That's fine.

20 THE COURT: Okay. So I am adjourning this matter  
21 to December 3rd at 10:00 a.m.

22 I assume none of the defendants have any objection  
23 to me excluding time?

24 Is there any objection?

25 MR. EMOUNA: No objection, Your Honor.

Proceedings

10

1 MR. ABELL: No objection.

2 THE COURT: Okay. I am excluding time between now  
3 and then in view of the fact that discovery needs to be  
4 provided and the defendants need time to review it.

5 As to all the defendants, I remind you that you  
6 are obligated to continue to comply with all  
7 Pretrial Services's conditions.

8 Is there anything else that we need to discuss,  
9 Counsel?

10 MS. JONES: No, Your Honor. Just on the order of  
11 excludable delay, the Government does note that in its view,  
12 this case is complex due to both the number of defendants  
13 and the number of discovery that will be involved. And in  
14 addition, while it's still -- we're still in very  
15 preliminary stages, there are the beginning of ongoing plea  
16 negotiations with at least some of the parties.

17 THE COURT: Okay. So I will wait until I have a  
18 better sense of the volume of discovery.

19 MS. JONES: Okay.

20 THE COURT: There is no basis for me to deem it  
21 complex based on the number of Defendants. But depending on  
22 the volume of discovery, once that is provided and the  
23 defendants have a better sense of what it is, you can make  
24 that motion, and I will hear from the defendants if there is  
25 any objection to that.

Proceedings

11

1 Anything else today?

2 MS. JONES: Not from the Government, Your Honor.

3 Thank you.

4 THE COURT: Is there anything else from the  
5 defendants.

6 ALL DEFENDANTS' COUNSEL: No, Your Honor. Thank  
7 you.

8 THE COURT: All right. We are adjourned until  
9 December 3rd.

10 MR. EMOUNA: Thank you, Your Honor.

11 (Matter concluded.)

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16 *I (we) certify that the foregoing is a correct transcript*  
17 *from the record of proceedings in the above-entitled matter.*

17

18 /s/ David R. Roy  
DAVID R. ROY

October 8, 2019  
Date

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